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IN THE

Supreme Court of the United States

October Term, 1967
No. 761

INTERNATIONAL ATLAS SERVICES, INC., a Division of ATLAS CORPORATION, formerly known as INTERNATIONAL AIRCRAFT SERVICES, INC., a Delaware Corporation,

Petitioner,

vs.

TWENTIETH CENTURY AIRCRAFT COMPANY, a partnership; J. B. LEWIN, S. WEISS, R. R. HART and J. FISCHGRUND, individually and as partners doing business as TWENTIETH CENTURY AIRCRAFT COMPANY,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondents, with the exceptions and additions hereinafter noted, adopt the Statement of the case set forth in petitioners Petition for a Writ of Certiorari filed herein.

The trial court found:

"That it is true that the plaintiff, on or after June 6, 1961, had constructive knowledge of the conditional sales agreement, dated April 8, 1961, in which defendants were the conditional vendors of the aircraft N-90771 and President Airlines, Inc., a Delaware corporation

were conditional vendees and all the terms and conditions thereof" (15 b);[1]

"That it is true that prior to June 6, 1961 and before May 1, 1961, plaintiff had actual knowledge that President Airlines was the vendee of said Aircraft N-90771 pursuant to conditional sales agreement and that defendants were the vendors pursuant to the conditional sales agreement" (15 b);

"That it is true that none of the three engines claimed by plaintiff were installed on said aircraft N-90771 prior to June 6, 1961" (15 b)

The conditional sales agreement referred to was admitted into evidence as Plaintiff's Exhibit No. 11. (R.T. 66)

The conditional sales agreement Plaintiff's Exhibit No. 11.) provided, among other things, as follows:

"Until happening of an event of default as specified herein, Buyer shall have the right to remove from said aircraft any engine, accessory, or other article of equipment covered hereby which may have become unfit for use, but only if Buyer shall have substituted for the same another engine, accessory or other article of equipment which is owned by Buyer and is not at the time subject to any lien or other mortgage, claim, charge or incumbrance and is of the type, kind and character as the engine, accessory or other article of equipment

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[1] Unless otherwise indicated numbers in parentheses refer to pages in Clerk's Transcript. Reporter's Transcript references are designated R.T.

replaced and has a value and utility at least equal to that of said engine, accessory or other article of equipment so removed if the latter were in a useable condition."

Further, insofar as petitioner's Statement of the Case implies wrong doing of some unspecified sort by respondents, the findings of fact made by the trial court expressly negate that inference. No demand was made by petitioners for the return of any engines until after respondents had repossessed the aircraft pursuant to the terms of the conditional sales agreement with the vendee.

The court found:

"That it is true that the plaintiff demanded possession of said three aircraft engines together with the demountable assembly prior to the commencement of this action; that said demand was made on November 7, 1961, at or about the time the defendants had repossessed said aircraft N-90771 pursuant to the terms of its conditional sales agreement with President Airlines." (15 a)

"It is not true that the defendants unlawfully obtained or retained possession of the said personal property. It is not true that the value of said personal property claimed by plaintiff was Eighty Four Thousand Dollars ($84,000.00) on November 7, 1961" (15 b)

The Statement of the Case is also misleading insofar as it implies that the respondents' position that 49 U.S.C. Section 140 V, controlled the factual situation was a

new ground somehow imposed upon petitioner by the District Court of Appeal.

The Trial Brief filed with the court by respondents at the time of the trial contained the following:

"The Federal Government pre-empted the field of conveyancing interest in aircraft. The State Courts have not questioned the rights of the Federal Government to do so. (Citations omitted) 49 U.S.C. A § 1403 sets forth the direction of Congress in this matter. The pertinent provisions read as follows: (Text omitted)"

In the opening statement at the time of trial, respondents stated, among other things, "primarily, our position is as set forth in our Trial Brief, and it is this: That in dealing with aircraft, we are dealing with the Federal Law, which has pre-empted the field, and we need look no further than the statutes, the pertinent parts of which, I believe, were set out previously." (R.T. l. 26 p. 379 l. 5 p. 380)

The Trial Court also indicated in its informal opinion rendered from the bench that the provisions of 49 U.S.C. 1403 were controlling. (R.T. 603-605)

ARGUMENT

I

Petition should be denied because of lack of jurisdiction under 28 U.S.C. §1257 (3)

Petitioner's admission found on page 8 of its Petition herein that "Petitioner does not question the constitutional right of the United States to enact legisla-

tion such as 49 U.S.C. § 1403 or the fact that such legislation would pre-empt contrary state laws and questions which fell within the scope of said action.", disposes of the Petition herein for a Writ of Certiorari to the Court of Appeal for the Second Appellate District of the State of California. By this admission petitioner has effectively removed itself from the provisions of 28 U.S.C. 1257 (3) by conceding that no claim is being made by petitioner that there is a question of the validity of a state statute on the ground of its being repugnant to the Constitution or laws of the United States.

II

There is no question that the United States Government under the Commerce Clause of the United States Constitution, has the right to regulate commercial aviation and that such legislation does pre-empt state laws in the field. When the question has arisen the reported decisions of all courts where the question has been presented have upheld the paramount power of the Federal Government and the authority of 49 U.S.C. § 1403 and the regulations of the Civil Aeronautics Administration adopted pursuant thereto.[2]

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[2] 15 Federal Register 9442

United States vs. United Aircraft Corp. (D. Conn. 1948) 80 F. Supp. 2; Continental Radio Co. vs. Continental Bank & Trust Co. Tex. Civ. App. 1963), 369 S.W. 2d 359; In re Veterans Air Express, Inc. 76 Fed. Supp. 684; Kerley Chemical Company vs. Colbach 145 Cal.App.2d 509; Crescent City Aviation, Inc. vs. Beverly Bank (1966-*Ind. App.*), N.E. 2d 446

California law in effect at the time of the transaction herein recognized that the laws of the State of California insofar as mortgages of aircraft or parts of aircraft were concerned were subject to the paramount authority of the provisions of the laws of the United States governing the same.[3]

Petitioner's position, if it is a position, that it has an unlimited, unrestricted, right to contract with respect to its property, even if such right infringes upon the right of others is not well-founded. Without burdening this Honorable Court with citations, it is submitted that this premise is contradicted by well-recognized principles in the fields of mechanics and materialmen liens, mortgages and conditional sales. The implication 49 U.S.C. § 1403 and the provisions thereof relating to the effect of recording or non-recording of conveyances or instruments affecting aircraft and aircraft engines somehow violates the due process provisions of the United States Constitution is not well-taken. Petitioner's failure to record under federal law resulted in the subordination of its interest in certain aircraft engines. This failure to follow the established federal laws cannot be the subject of a claim that due process has not been accorded to petitioner.

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[3] California Civil Code §2958 (a)

CONCLUSION

For the foregoing reasons the Petition for a Writ of Certiorari to the District Court of Appeal, Second Appellate District, State of California should not be granted.

Respectfully submitted,

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